



Consumer market study on the functioning of legal and commercial guarantees for consumers in the EU

Country fiche: Ireland

EUROPEAN COMMISSION

Produced by Consumers, Health, Agriculture and Food Executive Agency (Chafea) on behalf of:

Directorate-General for Justice and Consumers
Directorate E — Consumers
Unit E.1 Consumer markets

Contact: Marilena Di Stasi

E-mail: JUST-CONSULT-E1@ec.europa.eu

*European Commission
B-1049 Brussels*

Consumer market study on the functioning of legal and commercial guarantees for consumers in the EU

Country fiche: Ireland

***Europe Direct is a service to help you find answers
to your questions about the European Union.***

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

“This report was produced under the EU Consumer Programme (2014-2020) in the frame of a specific contract with the Consumers, Health, Agriculture and Food Executive Agency (Chafea) acting on behalf of the European Commission. The content of this report represents the views of the Ipsos-London Economics-Deloitte consortium and is its sole responsibility; it can in no way be taken to reflect the views of the European Commission and/or Chafea or any other body of the European Union. The European Commission and/or Chafea do not guarantee the accuracy of the data included in this report, nor do they accept responsibility for any use made by third parties thereof.”

“The Ipsos-London Economics-Deloitte consortium present this document for the purposes of information only. The information contained here may not be current, does not constitute legal advice and should not be relied upon as such.”

More information on the European Union is available on the Internet (<http://europa.eu>).

Luxembourg: Publications Office of the European Union, 2015

PDF	ISBN 978-92-79-53720-2	ISSN 2443-5228	doi: 10.2838/658954	DS-02-15-945-EN-N

© European Union, 2015

Reproduction is authorised provided the source is acknowledged.

TABLE OF CONTENT

1. Ireland	6
1.1 Regulatory background	6
1.1.1 Transposition of Directive 1999/44/EC	6
1.1.2 Table of the transposition	9
1.1.3 Additional rights	16
1.2 Enforcement and redress	17
2. Bibliography	19

TABLES

Table 1: Transposition of Directive 1999/44/EC in the Irish legislation	10
---	----

BOXES

Box 1: Case on lack of conformity from Law 11/2003	18
Box 2: Case on the scope of Law 11/2003	18

1. Ireland

1.1 Regulatory background

Directive 1999/44/EC on Consumer Sales was transposed via Law 11/2003, 22nd January, as the European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003¹.

1.1.1 Transposition of Directive 1999/44/EC

Departures from the original provisions at the EU level include interpretation, the relationship between regulations and consumer protection enactments and the jurisdiction of courts to order the repair or replacement of defective goods as defined under Irish law. Each point is subsequently commented on below².

Interpretation

The definitions contained in Article 1 of Directive 1999/44/EC are all transposed. The Irish regulator decided to add two extra definitions. These are “Directive”³ and “enactment”⁴. In addition, the Irish regulation contains a paragraph explaining references in the regulation to (a) a regulation and (b) a paragraph or subparagraph⁵.

The interpretation article also clarifies that expressions used in the Irish regulation 11/2003 which are also used in the Directive 1999/44/EC have the same meaning⁶.

Relationship between Regulations and consumer protection enactments

Ireland decided to adopt an article about the ‘Relationship between Regulations and consumer protection enactments’⁷. This article states that “these regulations are in addition to, and not in substitution for, any other enactment relating to the sale of goods or the terms of contracts concluded with consumers and in particular (a) the Sale of Goods and Supply of Services Acts 1893 and 1980, and (b) the European Communities (unfair Terms in Consumer Contracts Regulations 1995 (S.I. No.27 of 1995).”⁸ The article further explains that the consumer may opt to invoke a particular provision from

¹ Irish Statute Book, S.I No. 11/2003 – European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003. Accessed: May, 2015. Retrieved from: <http://www.irishstatutebook.ie/2003/en/si/0011.html>

² All the articles mentioned below pertain to Law S.I No. 11/2003 – European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003. From now on, “Law 11/2003”. If alternative legislation is commented, this will be cited accordingly.

³ The complete definition states “Directive means Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees”. Article 2, paragraph 1, Law 11/2003.

⁴ The complete definition states “enactment includes an instrument made under an enactment”. Article 2, paragraph 1, Law 11/2003.

⁵ Commented in Law 11/2003, Article 2, paragraph 2.

⁶ Paragraph clarifies that “a word or expression that is used in these regulations and is also used in the Directive has, unless the contrary intention appears, the same meaning in these regulations as it has in the Directive.” Article 2, paragraph 3, Law 11/2003.

⁷ Directive 1999/44/EC, on certain aspects of the sale of consumer goods and associated guarantees, is a minimum harmonisation. From now on “Directive 1999/04/EC”. (Article 8.2 states that “member states may adopt or maintain in force more stringent provisions, compatible with the Treaty in the field covered by this Directive, to ensure a higher level of consumer protection”). Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31999L0044&from=EN>

⁸ Article 3, paragraph 1, Law 11/2003

the regulation 11/2003 over another enactment in order to be offered the highest level of protection, and vice versa⁹.

Jurisdiction of court to order repair or replacement

The Irish legislator has highlighted that the courts established by the Courts (Establishment and Constitution) Act 1961 have jurisdiction to order the repair or replacement of consumer goods¹⁰. While the legal guarantee goes into an interruption during repair or replacement, the guarantee is not renewed once the remedy is executed¹¹.

Duration of legal guarantee

S.I. No. 11/2003 - European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003, which otherwise transposes Directive 1999/44/EC on Consumer Sales into Irish law, does not specify the duration of the legal guarantee. Instead, the Statute of Limitations 1957 would apply, and this provides a six-year window for consumers to make a claim against their trader in cases where they believe that the purchased consumer good does not conform¹². It should be noted that the Sale of Goods and Supply of Services Act, 1980 amended the Statute of Limitations 1957 in the case of motor vehicles when these are used by a person other than the buyer. The amendment states that if the person (who is not the buyer) uses the purchased motor vehicle and “suffers loss” as a result of the seller’s breach of contractual conditions relating to good conformity, then the person can take action against the trader within a period of two, and not six, years from the purchase date¹³.

Responsibility in the case of a defective good

Irish law places the onus of responsibility on the seller for any defects that were already present at the time the good was delivered to the consumer¹⁴.

Proving presence of a defect

Irish law states that when a consumer takes action against a trader within six months of the date the defective good was delivered to them, the defect will be presumed to have existed at the time of the good’s delivery, and therefore the trader is considered liable for the defect. In this case, it will be up to the trader to prove that the good conformed to the sales contract at the time of the good’s delivery¹⁵. The law also states that this

⁹ Commented in Law 11/2003, Article 3, paragraph 2-4.

¹⁰ Commented in Law 11/2003, Article 11.

¹¹ECC-Net, Ireland Country Fiche, (Undated document) http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-GUARANTTEE/country_fact_sheets/Country_fiche_IE.pdf

¹² Irish Statute Book, “Statute of Limitations, 1957”. Part II Section 11 (1) states that “actions founded on simple contract” (amongst others), “shall not be brought after the expiration of six years from the date on which the cause of action accrued”.

¹³ This amendment is made in Irish Statute Book, “Sale of Goods and Supply of Services Act, 1980”, Part II Section 13(8)(II)

¹⁴ Irish Statute Book, “S.I No. 11/2003 – European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003), Regulation 7(1) states the following: “The seller shall be liable to the consumer for any lack of conformity referred to in Regulation 5 which exists at the time the goods were delivered.” (Note that Regulation 5 states that the delivered consumer good must be in conformity with the sales contract under which it was delivered).

¹⁵ Irish Statute Book, “S.I No. 11/2003 – European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003), Regulation 8(1)

presumption only applies in cases where the nature of the good and its associated defect make such a presumption reasonable¹⁶.

Remedies available to the consumer in the case of non-conformity and free of charge

Irish law gives consumers three possible remedies in the case of the non-conformity of goods. In the first instance, the consumer can have the goods repaired or replaced free of charge¹⁷. The law specifies that what is meant by “free of charge” is “free of the costs that must necessarily be incurred to bring the goods into conformity”. It also specifies that the definition of costs here encompasses the “cost of carriage, postage, labour and materials”¹⁸. Price reduction and contract rescission are the remaining possible remedies¹⁹.

Repair and replacement are prioritised in terms of the “menu” of remedies (that is, the first of the possible remedies that should be sought)²⁰. However, the law states that the choice of remedy ultimately comes down to which of the options is deemed to be most proportionate to the nature of the defect in question²¹. When defining what would be considered proportionate, the law advocates that the following are taken into account: the value of the good without the defect, the magnitude of the defect, and whether one of the alternative remedy options could have been implemented without inflicting “significant inconvenience” on the consumer in question²².

Price reduction and contract rescission are the next two possible remedies²³. In terms of price reduction and contract rescission, these options are available to the consumer in three cases: First, when the options of repair or replacement are not available to the consumer; second, when the seller has not repaired or replaced the good within a reasonable time period and, finally, when repair or replacement has been implemented but inflicted significant inconvenience on the consumer²⁴. Although contract rescission is theoretically possible under these conditions, the law states that contract rescission is not possible in cases where the lack of conformity is deemed to be “minor”²⁵.

Deadline for implementing the solution

In terms of imposing a deadline for the implementation of a solution, the law does not specify an actual time period however it does state that “[w]here the remedy of repair or replacement is provided the repair or replacement shall be completed within a reasonable time.” What is and is not a reasonable period might understandably be

¹⁶ Irish Statute Book, “S.I No. 11/2003 – European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003), Regulation 8(2)

¹⁷ Irish Statute Book, “S.I No. 11/2003 – European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003), Regulation 7(2)

¹⁸ Irish Statute Book, “S.I No. 11/2003 – European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003), Regulation 7(6)

¹⁹ Irish Statute Book, “S.I No. 11/2003 – European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003), Regulation 7(2)

²⁰ Irish Statute Book, “S.I No. 11/2003 – European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003), Regulation 7(3)

²¹ Irish Statute Book, “S.I No. 11/2003 – European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003), Regulation 7(4)

²² Irish Statute Book, “S.I No. 11/2003 – European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003), Regulation 7(4)

²³ Irish Statute Book, “S.I No. 11/2003 – European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003), Regulation 7(2)

²⁴ Irish Statute Book, “S.I No. 11/2003 – European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003), Regulation 7(7)

²⁵ Irish Statute Book, “S.I No. 11/2003 – European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003), Regulation 7(8)

expected to vary from one instance to another which is why the law states that any judgment on reasonable time periods must be made “...taking account [of] the nature of the goods and the purpose for which the consumer required them.”²⁶

1.1.2 Table of the transposition

The next page displays the articles from Directive 1999/44/EC on Consumer Sales and its transposition into the Irish legislative system. Most of the articles have been transposed, some of them contain an extension of the scope provided by the European legislation and some have been excluded. The provisions are primarily found in the European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003, which complement Ireland’s existing national legislation related to the sale of goods under contract: notably the Sale of Goods Act 1893 and 1980²⁷.

²⁶ Irish Statute Book, “S.I No. 11/2003 – European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003), Regulation 7(5)

²⁷ Notification Art. 33 CRD National provisions going beyond Art. 5(1) to (3) and Art. 7(1) of Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees, available at: http://ec.europa.eu/justice/consumer-marketing/files/ie_notification_art._33-csgd.pdf

Table 1: Transposition of Directive 1999/44/EC in the Irish legislation

Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose	11/2003	Regulations purpose is to give effect to Directive 1999/44/EC
	1.2.a	Def. Consumer	11/2003 Art. 2.1	"consumer" means a natural person who, as regards a sale or associated guarantee, is acting for purposes which are outside that person's trade, business or profession;
	1.2.b	Def. Consumer goods	11/2003 Art. 2.1	"consumer goods" means any tangible moveable item, other than — (a) goods sold by way of execution or otherwise by authority of law, (b) water or gas where it is not put up for sale in a limited volume or set quantity, and (c) electricity;
	1.2.c	Def. Seller	11/2003 Art. 2.1	"seller" means any natural or legal person who, under a contract, sells consumer goods in the course of his or her trade, business or profession.
	1.2.d	Def. Producer	11/2003 Art. 2.1	"producer" means any manufacturer of consumer goods, importer of consumer goods into the territory of the Community or any person purporting to be a producer by placing his or her name, trade mark or other distinctive sign on the consumer goods
	1.2.e	Def. Guarantee	11/2003 Art. 2.1	"guarantee" means any undertaking by a seller or producer to the consumer, given without extra charge, to reimburse the price paid or to replace, repair or handle consumer goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising
			Sale of Goods and Supply of Services Act 1980, Section 15	This section describes a guarantee as a "document, notice or written statement" that is provided to the consumer by the "manufacturer or other supplier, other than a retailer" in relation to a good or service. The guarantee communicates to the consumer that "the manufacturer or other supplier will service, repair or otherwise deal with the goods following purchase."
	1.2.f	Def. Repair	11/2003 Art. 2.1	"repair" means, in the event of lack of conformity of consumer goods, to bring the goods into conformity with the contract of sale
	1.3	Exclusion second hand		Exclusion of second hand goods acquired in administrative auctions in which consumers can be present
	1.4	Contracts of sale types	11/2003 Art. 2.4	Contracts for the supply of consumer goods to be manufactured or produced shall be regarded as contracts of sale for the purpose of these Regulations
Conformity with the contract	2.1	Conformity requirement	11/2003 Art. 5.1	The consumer goods delivered under a contract of sale to the consumer must be in conformity with that contract.

	2.2	Good conformity	11/2003 Art. 5.2	For the purpose of these Regulations, consumer goods are presumed to be in conformity with the contract of sale if they — (a) comply with the description given by the seller and possess the qualities of the goods which the seller has held out to the consumer as a sample or model, (b) are fit for any particular purpose for which the consumer requires them and which he or she made known to the seller at the time of conclusion of the contract and which the seller has accepted
			Sale of Goods Act 1893 (Implied undertakings as to quality or fitness), Section 14 and Section 34	Section 14 states that sales of goods involve an “implied condition” that the goods being sold are of “merchantable quality”. The definition of “merchantable quality” is provided in Section 14(3) and (4), where it is stated that goods are considered to be of merchantable quality if they are “fit for the purpose or purposes” for which such goods were bought. The purpose for which a good was bought is either deduced, based on what consumers would typically expect such a good to be used for, or that purpose is communicated by the buyer to the seller in the context of the sale itself “expressly or by implication”. In addition to being fit for purpose, goods are considered to be of “merchantable quality” if they are durable: and the section states that goods’ expected durability is a function of the good’s description, and, where relevant, the good’s price as well as other factors. The Section suspends this condition in cases where the consumer’s attention was drawn to the good’s defect before the purchase, as well as in cases where the consumer examined the good before purchase in such a way that the defect should have been evident to him/ her. Section 34 states that the consumer must have a “reasonable opportunity” to examine goods before their purchase in such a way that will allow him to determine whether or not the goods are in conformity with the contract.
			Sale of Goods Act 1893 (Implied undertakings as to quality or fitness), Section 15 (Sale by Sample) (1) – (2)	This section sets out the description of a sale by sample, stating that a sale by sample can be said to occur when a contract either expressly or explicitly communicates this. In these cases, the section specifies that the consumer should expect the quality of the bulk to be in line with the quality of the sample and should be given the opportunity to compare the bulk with the sample. Finally, the Section also states that the bulk goods should not have any defects that would make them “unmerchantable” if these defects which would not be identifiable upon “reasonable examination” of the sample goods.
	2.3	Lack of conformity	11/2003 Art. 5.3	(c) are fit for the purposes for which goods of the same type are normally used, show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect(...) (d) statements on the specific characteristics of the goods made about them by the seller the producer or his representative, particularly in advertising or on labelling.

	2.4	Seller statements	11/2003 Art. 6.1	The seller shall not be bound by a public statement referred to in Regulation 5(2)(d) if the seller — (a) shows that he or she was not, and could not reasonably be expected to have been, aware of the statement, (b) shows that, by the time of conclusion of the contract, the statement had been corrected, or (c) shows that the decision to buy the consumer goods could not have been influenced by the statement.
	2.5	Installation	11/2003 Art. 6.2	Any lack of conformity resulting from incorrect installation of the consumer goods shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the contract of sale of the goods and the goods were installed by the seller or under his or her responsibility. The foregoing also applies if the goods, intended to be installed by the consumer, are installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.
Rights of the consumer	3.1	Liability	11/2003 Art. 7.1	The seller shall be liable to the consumer for any lack of which exists at the time the goods were delivered.
			Sale of Goods and Supply of Services Act 1980, Sections 17(1)-(2) and 19(1)	Section 17(1) states that a seller who provides the buyer with a guarantee when selling a good becomes responsible for upholding the terms of the guarantee and is therefore held liable in case the terms of the guarantee are not upheld – unless the seller makes clear to the buyer that he is not the guarantor. Section 17(2) states that in cases where a seller provides the buyer with the seller’s own written commitment to repair, replace or otherwise service the good after its purchase, the seller will not be held responsible for honouring the terms of the guarantee. This would not apply in cases where the seller makes clear that he is also the guarantor. Section 19(1) empowers the buyer to take action against “a manufacturer or other supplier” who falls short of upholding the guarantee’s terms “as if that manufacturer or supplier had sold the goods to the buyer” and also makes it clear that in these cases, the manufacturer or other supplier in question would be answerable to the courts. The section also highlights the fact that, in case of imported goods, the term “manufacturer” would also include the importer.
	3.2	Remedies	11/2003 Art. 7.2	In the case of such a lack of conformity, the consumer shall, subject to, and, in accordance with, this Regulation, be entitled to have — (a) the goods brought into conformity free of charge by repair or replacement, or (b) an appropriate reduction made in the price, or (c) the contract rescinded with regard to those goods.
			Sale of Goods Act 1893 Section 11	This Section states that the contract itself will stipulate whether the breach of a condition included within the contract should be treated as a “breach of warranty” with the appropriate remedies applied or whether the breach of that condition should be taken as a basis for the contract’s repudiation.

			Sale of Goods Act 1893 Section 53	This Section states that when a buyer has made a claim against a seller for a contract's breach, and when the seller does not address the breach or replace the good in question, or does not do so within a reasonable time, then the buyer has the right to reject the good or the contract wholesale or to turn to another entity to apply the appropriate remedy. In case the buyer opts for the latter, the original seller will be expected to carry the associated costs.
	3.3	Conditions	11/2003 Art. 7.3, 7.4, 7.5	(3) In the first place, the consumer may require the seller to repair the goods or to replace them (in either case free of charge) unless this is impossible or disproportionate. (4) Either of these remedies shall be deemed to be disproportionate if it imposes costs on the seller which, in comparison with those of the other remedy or of any other remedy mentioned in this Regulation, are unreasonable, taking into account — (a) the value the goods would have if there were no lack of conformity, (b) the significance of the lack of conformity, and (c) whether the alternative remedy could be completed without significant inconvenience to the consumer. (5) Where the remedy of repair or replacement is provided the repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required them.
	3.4	Free of charge	11/2003 Art. 7.6	In paragraphs (2) and (3) "free of charge" means free of the costs that must necessarily be incurred to bring the goods into conformity, including the cost of carriage postage, labour and materials.
	3.5	Reduction of the price	11/2003 Art. 7.7	(b) the seller has not completed the repair or replacement within a reasonable time, or
			11/2003 Art. 7.8	(c) the seller has not completed the repair or replacement without significant inconvenience to the consumer.
	3.6	Contract rescission	Sale of Goods Act 1893 Section 11	This Section states that the contract itself will stipulate whether the breach of a condition included within the contract should be treated as a "breach of warranty" with the appropriate remedies applied or whether the breach of that condition should be taken as a basis for the contract's repudiation.
Right of redress	4	Final seller liability		Exclusion of final seller shall be entitled to pursue remedies against the persons liable in the contractual chain.
Time limits	5.1	Time period		Exclusion of time period in which the seller can be held liable for lack of conformity
	5.2	Defect confirmation		Member states shall inform the commission of their use of this paragraph
	5.3	Reversed burden	11/2003 Art.8	Subject to paragraph (2), any lack of conformity which becomes apparent within 6 months from the date of delivery of the goods shall, unless the contrary is proved, be presumed to have existed at the time of delivery of the goods.
Guarantees	6.1	Legally binding	11/2003 Art. 9.1	A guarantee shall be legally binding on the offerer under the conditions laid down in the guarantee statement and the associated advertising.

	6.2	State rights and contents	11/2003 Art. 9.2	The guarantee shall (a) state that the consumer has legal rights under these Regulations and the other enactments governing the sale of consumer goods and make clear that those rights are not affected by the guarantee, and (b) set out in plain intelligible language the contents of the guarantee and the essential particulars necessary for making claims under the guarantee, including the duration and territorial scope of the guarantee as well as the name and address of the guarantor.
	6.3	Written contract	11/2003 Art. 9.3	On request by the consumer, the guarantee shall be made available in writing or another durable medium available and accessible to him or her.
			Sale of Goods and Supply of Services Act 1980, Section 15	This section describes a guarantee as a “document, notice or written statement”
	6.4	Language of guarantees		Exclusion that guarantee be drafted in different languages.
	6.5	Respect 6.2-4	11/2003 Art. 9.4	<i>Direct transposition</i> - Specifying the validity of the guarantee contract for consumer even if it infringes on the above three paragraphs
Binding nature	7.1	Restricted rights	11/2003 Art. 10	Direct transposition - Stating that previously agreed conditions between seller and consumer which are agreed before a lack of conformity is known will not be binding if they reduce the consumer rights under this Directive.
	7.1	Reduced period (2nd hand)		
	7.2	Measures of protection	11/2003 Art.4.1	A consumer shall not be deprived of the protection afforded by these Regulations as a result of his or her choosing as the law applicable to the contract the law of a non-Member State if the contract has a close connection with the territory of the Member States.
National law and minimum protection	8.1	Supplementary rights		
	8.2	National rules retain		
Information	9	Inform of the rights		
Modification	10	Directive 98/27/EC		
Transposition	11.1	Date		
	11.2	Provisions		
Review	12	Jul-06		
Entry into force	13	Day of publication		
Address	14	To Member States		
Recitals	17	Coverage for rights		Excluded

	18	Suspension period	2-year		Excluded
--	----	-------------------	--------	--	----------

* The mention of "direct" means a direct transposition, disregarding the fact that the sentences can be placed differently or paraphrased relative to the Directive formulation

Legend

	<i>Rules on procedures to transpose, no need to find translation in the national law</i>
	<i>Recitals –at the discretion of the Member State</i>
	<i>Options at the discretion of the Member State</i>

1.1.3 Additional rights

Extended rights

Article 8 paragraph 2 of the Directive states that “Member States may adopt or maintain in force more stringent provisions compatible with the treaty in the field covered by this Directive to ensure a higher level of consumer protection”²⁸. By using this article, Ireland has been able to keep existing provisions which provide more protection for consumers than the Directive. In Ireland, consumers can rely on either the provisions in the Directive or other legislation relating to the sale of goods, depending on which one provides better protection to consumers²⁹. Some areas where this is noticeable are listed below.

In article 3 paragraph 2 of the Directive, it states that consumers have the initial choice of either a repair or a replacement. This is then followed by a price reduction or rescission. However in Ireland, consumers can choose to invoke the remedies under the national legislation transposing Article 3, or they can choose to invoke the remedies available under the general sale of goods legislation.

In the national legislation 11/2003 article 7 paragraph 8, consumers are not entitled to have the contract rescinded where the non-conformity is minor. However under general sales law in Ireland consumers have the right to terminate a contract even when there is only a minor lack of conformity³⁰.

In relation to Article 3 paragraph 6 of the Directive, which prevents consumers from being able to rescind the contract where the lack of conformity is minor, it must be noted that in Ireland it is still possible to claim for damages or compensation instead of or as well as a claim under the provision implementing article 3. In Ireland a consumer can exercise the general right available in all contracts of sale to reject goods that do not comply with the implied terms and terminate the contract, provided that the consumer has not accepted the goods. Also in Ireland, consumers can retain the right to claim damages, which includes both loss of value in non-conforming goods and reasonably foreseeable consequential losses³¹.

Guarantee information

According to Section 16 of the Sale of Goods and Supply of Services Act 1980³²:

- (1) A guarantee shall be clearly legible and shall refer only to specific goods or to one category of goods.
- (2) A guarantee shall state clearly the name and address of the person supplying the guarantee.
- (3) A guarantee shall state clearly the duration of the guarantee from the date of purchase but different periods may be stated for different components of any goods.
- (4) A guarantee shall state clearly the procedure for presenting a claim under the guarantee which procedure shall not be more difficult than ordinary or normal commercial procedure.

²⁸ Directive 1999/44/EC, article 8 paragraph 2.

²⁹ Law 11/2003, Article 3.

³⁰ Irish Statute Book, “Sale of goods and supply of services act 1980”. Accessed: May, 2015. Retrieved from: <http://www.irishstatutebook.ie/1980/en/act/pub/0016/index.html>

³¹ Christian Twigg-Flesner, “Consumer Sales Directive (99/44)”. Available at: http://www.eu-consumer-law.org/consumerstudy_part2h_en.pdf

³² Notification Art. 33 CRD National provisions going beyond Art. 5(1) to (3) and Art. 7(1) of Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees, available at: http://ec.europa.eu/justice/consumer-marketing/files/ie_notification_art._33-csgd.pdf

- (5) A guarantee shall state clearly what the manufacturer or other supplier undertakes to do in relation to the goods and what charges, if any, including the cost of carriage, the buyer must meet in relation to such undertakings.
- (6) It shall be an offence for the manufacturer or other supplier of goods to supply in connection with the goods a guarantee which fails to comply with this section.

1.2 Enforcement and redress

Consumers who purchase faulty goods in Ireland are entitled to a repair, replacement or a refund³³. In case of a problem with consumer goods, consumers should address their claim primarily to the seller.

A second option is to complain to the appropriate complaints body. In Ireland there are a number of statutory and voluntary consumer bodies. Different consumer bodies have different responsibilities in relation to protecting consumer rights. For example, the competition and consumer Protection Commission (CCPC) handles complaints at national level. The European consumer centre (ECC) handles complaints in a cross border context³⁴.

Mediation

Mediation appears to be an ad hoc solution in Ireland, insofar as no particular body is assigned the task of mediating on consumer issues. Both parties involved in the dispute agree to use a neutral third party to help solve the dispute, and the terms of the agreement are decided between the parties with the help of the mediator. Generally, decisions made in mediation are not legally binding but they can be made so if both parties agree to it³⁵.

Arbitration

Similar to mediation, the arbitration process in Ireland appears to be ad hoc, although the process is governed by law. The decision of the arbitrator is legally binding and the process is governed by law (Arbitration Act 2010). According to Ireland's Citizens Information service, "You can represent yourself but you may benefit from legal representation if a dispute is taken to an arbitrator"³⁶.

Small Claims Court

In Ireland, for claims under €2,000, the Small Claims court may be used³⁷. The small claims court is available to consumers to resolve complaints that arise with respect to consumer goods and is intended to provide consumers with a quick, easy and inexpensive way of resolving disputes without having to use a solicitor. In Ireland this service is provided in the local district court office³⁸. However, the decision of the Small Claims Court

³³ Citizens information, "how to make a consumer complaint". Accessed: May, 2015. Retrieved from: http://www.citizensinformation.ie/en/consumer_affairs/consumer_protection/consumer_complaints/how_to_make_a_consumer_complaint.html

³⁴ Citizens Information, "Consumer Protection Organisation". Accessed: May, 2015. Retrieved from: http://www.citizensinformation.ie/en/consumer_affairs/consumer_protection/consumer_rights/consumer_protection_organisations.html

³⁵ Citizens Information, "Alternative dispute resolution in Ireland". Accessed: May, 2015. Retrieved from: http://www.citizensinformation.ie/en/consumer_affairs/consumer_protection/consumer_complaints/alternative_dispute_resolution_in_ireland.html

³⁶ Citizens Information, "Alternative dispute resolution in Ireland". Accessed: May, 2015. Retrieved from: http://www.citizensinformation.ie/en/consumer_affairs/consumer_protection/consumer_complaints/alternative_dispute_resolution_in_ireland.html

³⁷ Citizens Information, "Alternative dispute resolution in Ireland". Accessed: May, 2015. Retrieved from: http://www.citizensinformation.ie/en/consumer_affairs/consumer_protection/consumer_complaints/alternative_dispute_resolution_in_ireland.html

³⁸ Citizens Information, "Small Claims Court". Accessed: May, 2015. Retrieved from: http://www.citizensinformation.ie/en/justice/courts_system/small_claims_court.html

is not by itself binding – the claimant must pursue the matter via court in the case of non-compliance by another party³⁹.

Cases

There have been a number of cases dealing with conflicts with regard to guarantees for consumer goods in Ireland. Below are examples from the national consumer agency's annual report⁴⁰.

Box 1: Case on lack of conformity from Law 11/2003⁴¹

It was found that a seller had been providing incorrect information to a consumer in relation to vehicle mileages. A court in Ireland deemed the vehicles to lack in conformity and found the seller guilty of engaging in misleading commercial practices. The seller was fined €500 and a compensation order of €7,000 was secured from the court on behalf of the affected consumer.

Box 2: Case on the scope of Law 11/2003⁴²

Action was taken against a seller in Ireland which resulted in compliance notices being issued. One of the reasons action was taken was that the seller did not provide information to consumers about the existence of a right to cancellation, prior to making the contract. The seller also “failed to inform consumers of their right to a refund of any monies paid to them as soon as possible”.

³⁹ Citizens Information, “Small Claims Court”. Accessed: May, 2015. Retrieved from: http://www.citizensinformation.ie/en/justice/courts_system/small_claims_court.html

⁴⁰ National Consumer Agency (2014), “Annual Report 1 January – 30 October”. Available at: <http://corporate.nca.ie/eng/About/Annual%20Reports/NCA-2014-Annual-Report-English.pdf>

⁴¹ National Consumer Agency (2014), “Annual Report 1 January – 30 October”. Available at: <http://corporate.nca.ie/eng/About/Annual%20Reports/NCA-2014-Annual-Report-English.pdf>

⁴² National Consumer Agency (2014), “Annual Report 1 January – 30 October”. Available at: <http://corporate.nca.ie/eng/About/Annual%20Reports/NCA-2014-Annual-Report-English.pdf>

2. Bibliography

European Legislation

Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees - Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999L0044:en:HTML>

Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council – Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:en:PDF>

Legislation

Irish Statute Book, S.I No. 11/2003 – European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003. Retrieved from: <http://www.irishstatutebook.ie/2003/en/si/0011.html>

Irish Statute Book, “Sale of goods and supply of services act 1980”. Retrieved from: <http://www.irishstatutebook.ie/1980/en/act/pub/0016/index.html>

Irish Statute Book, “Statute of Limitations, 1957”. Retrieved from: <http://www.irishstatutebook.ie/eli/1957/act/6/enacted/en/html>

Notification Art. 33 CRD National provisions going beyond Art. 5(1) to (3) and Art. 7(1) of Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees. Retrieved from: http://ec.europa.eu/justice/consumer-marketing/files/ie_notification_art_33-csgd.pdf

Reports

ECC-Net, Ireland Country Fiche, (Undated document) http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-GUARANTEE/country_fact_sheets/Country_fiche_IE.pdf

Christian Twigg-Flesner, “Consumer Sales Directive (99/44)”. Retrieved from: http://www.eu-consumer-law.org/consumerstudy_part2h_en.pdf

National Consumer Agency (2014), “Annual Report 1 January – 30 October”. Retrieved from: <http://corporate.nca.ie/eng/About/Annual%20Reports/NCA-2014-Annual-Report-English.pdf>

Websites

Citizens information, “how to make a consumer complaint”. Accessed: May, 2015. Retrieved from: http://www.citizensinformation.ie/en/consumer_affairs/consumer_protection/consumer_complaints/how_to_make_a_consumer_complaint.html

Citizens Information, “Consumer Protection Organisation”. Accessed: May, 2015. Retrieved from: http://www.citizensinformation.ie/en/consumer_affairs/consumer_protection/consumer_rights/consumer_protection_organisations.html

Citizens Information, “Alternative dispute resolution in Ireland”. Accessed: May, 2015. Retrieved from:

http://www.citizensinformation.ie/en/consumer_affairs/consumer_protection/consumer_complaints/alternative_dispute_resolution_in_ireland.html

Citizens Information, "Alternative dispute resolution in Ireland". Accessed: May, 2015.
Retrieved from:

http://www.citizensinformation.ie/en/consumer_affairs/consumer_protection/consumer_complaints/alternative_dispute_resolution_in_ireland.html

Citizens Information, "Alternative dispute resolution in Ireland". Accessed: May, 2015.
Retrieved from:

http://www.citizensinformation.ie/en/consumer_affairs/consumer_protection/consumer_complaints/alternative_dispute_resolution_in_ireland.html

Citizens Information, "Small Claims Court". Accessed: May, 2015. Retrieved from:

http://www.citizensinformation.ie/en/justice/courts_system/small_claims_court.html

